

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO. 316 OF 2024
WITH
INTERVENTION APPLICATION NO.439 OF 2024**

Mahesh Gajanan Gotarne	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Gautam Kanchanpurkar, for the Applicant.
Mr. R.M. Pethe, APP, for the Respondent/State.
Mr. Gaurav Parkar, for the Applicant in IA No. 439 of 2024.
Mr. Krishna Vartha, PSI, Vasind police station.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 16, 2024

P.C.:

1. Heard the learned APP for the State.
2. The learned APP for the State submits that in the order dated 2nd April, 2024 in the cause title, instead of the name “Ms. Ranjana Humane” learned APP for the State, it be corrected to “Mr. R.M. Pethe”.
3. In the order dated 2nd April, 2024, in the cause title the name of learned APP be replaced by “Mr. R.M. Pethe” in the place of “Ms. Ranjana Humane.
4. Rest of the order remains unaltered.
5. Corrected original order be uploaded.
6. Heard the learned counsel for the applicant and the learned

APP for the State.

7. The applicant, who is arraigned in C.R. No. 58 of 2023 registered with Vasind police station for the offences punishable under sections 302, 307, 326, 324, 354, 143, 147, 148, 149, 323, 504 and 506 of Indian Penal Code, 1860 and section 37(1)(a) read with 135 of Maharashtra Police Act, 1951, seeks to be enlarged on bail.

8. Elections to the post of Director of Vasind Co-operative Society Ltd., were held on 19th March, 2023 in which Ramchandra Kashinath Botkondle (the deceased), the brother of the first informant - Mahendra Botkondle, was elected. The deceased defeated Vilas Partole of the accused party. At about 8.30 pm, the victory procession was passing from in front of the house of the accused Ganesh Partole. The first informant alleged that the applicant and other 16 accused formed an unlawful assembly. They were armed with various weapons. The members of the unlawful assembly started to abuse and assault the members of the first informant party, who were proceeding towards the temple. The applicant allegedly assaulted the deceased by means of an iron rod on his left hand, chest, head and neck. The deceased fell down. Thereafter, all the members of the unlawful assembly assaulted the deceased by means of fist and kick blows and sticks. A

lady came to the rescue of the deceased. She was also assaulted. The members of the unlawful assembly allegedly outraged the modesty of the said injured lady.

9. At the outset, Mr. Gautam Kanchanpurkar, the learned counsel for the applicant, submitted that this Court while granting pre-arrest bail to co-accused Nitin Gotarne has considered the merits of the accusation against the applicant as well. No case for the offence punishable under section 302 of the Penal Code can be said to have been prima facie made out as the very factum of homicidal death appears to be contentious.

10. Mr. Pethe, the learned APP resisted the prayer for bail. Mr. Parkar, the learned counsel for the applicant in Intervention Application No.439 of 2024, also resisted the prayer for bail.

11. It was submitted that a specific role of assault by means of iron rod has been attributed to the applicant. It can not be said that the applicant did not intend to cause the death of the deceased. Mere fact that the autopsy surgeon on internal examination found 56% blockages in main artery does not necessarily imply that the deceased did not meet a homicidal death.

12. I have perused the material on record carefully. While granting pre-arrest bail to the co-accused Nitin Gotarne, this Court had, inter alia, observed as under :-

9]) From the perusal of the allegations in the FIR, it becomes evident that the genesis of the occurrence is in the election to the Vasind Co-operative Society Ltd. Prima facie, it appears that as the victory procession came in front of the house of Ganesh, the co-accused, an altercation ensued and, thereafter, the members of both the groups had virtually a free fight. As noted above in the FIR lodged by the Ganesh being leading to CR No. 57 of 2023, 17 named and other 4 to 5 unknown persons, were allegedly the members of the unlawful assembly formed by the informant party.

10) In this backdrop, the role attributed to the applicant, the nature of the injuries sustained by the deceased and their correlation with the assault attributed to the particular accused assume significance. The first informant alleged that the applicant was armed with a stick. In the FIR, the allegation of unleashing the blows by means of an iron rod on the person of the deceased is attributed to co-accused Mahesh. It is alleged that due to the blows by means of an iron rod given by the co-accused Mahesh, on the left hand, head, chest and neck of the deceased, the latter fell to the ground. Thereafter, the rest of the members of the unlawful assembly including the applicant assaulted the deceased.

11) It would be contextually relevant to note that the injury certificate of the deceased issued by the Primary Health Center records three simple injuries. The injury certificate issued by the Pranav Multispeciality Hospital indicates that the deceased had suffered CLW on the scalp (frontal region). It further records that for ulna fracture the deceased was operated upon and plating was done on 20th March, 2023. On 28th March, 2023 at about 7.45 am, the deceased suffered Anterior Wall MI (myocardial infarction). It is true the PM report refers to the fact that the deceased had suffered a fracture on the ulna. At the same time the internal examination revealed that there were coronary artery blockages.

12) In the aforesaid view of the matter, especially the fact that the deceased had suffered three simple injuries in the alleged occurrence, whether the deceased met a homicidal death on account of the injuries sustained in the alleged occurrence, prima facie appears to be a matter for trial. Moreover, all these injuries are prima facie attributable to the assault by co-accused Mahesh. In a situation of this nature, where two groups, comprising a large number of persons on each side, were allegedly involved in the occurrence, the aspect as to whether a particular member of the unlawful assembly had shared the common object of the unlawful assembly to commit the alleged offence or knew

that those offences would be committed in prosecution of the common object of the unlawful assembly, merits consideration.

13. Prima facie, it appears that the question as to whether the deceased met a homicidal death would be a matter for adjudication at the trial. The injury certificate issued by Primary Health Center indicates that, in the estimation of the Medical Officer, the deceased had sustained 3 simple injuries. Pranav Hospital, where the deceased was shifted, has recorded that the primary cause of death appeared to be “Anterior Wall MI” which the deceased suffered on 28th March, 2023. In the postmortem report also the autopsy surgeon recorded that on dissection of the heart, the left main coronary artery was 56% blocked. Hematoma was seen at upper part of left ventricle near the base. Blood and blood clots were present.

14. If the postmortem report is considered in conjunction with the initial injury certificate, issued by the medical officer at Primary Health Center, and the primary cause of death noted by Pranav Hospital, prima facie, the submission on behalf of the applicant, that the question as to whether the deceased met with a homicidal death appears debatable, carries substance.

15. In any event, it appears that there was a fight between two groups. It is alleged that 16 members of the applicant's group

allegedly assaulted the deceased and other members of the informant party.

16. Whether the injuries which were noted on the person of the deceased, could be attributed to the applicant alone, would thus be a matter for evidence. The investigation seems to be completed. The charge sheet has been lodged. The applicant has been in custody since 28th March, 2023. Further detention of the applicant does not seem warranted. The applicant seems to have roots in society.

17. I am, therefore, inclined to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Mahesh Gajanan Gotarne be released on bail in C.R. No. 58 of 2023 registered with Vasind police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall not enter the limits of village Ambarje, Tal. Shahapur for a period of three years or till the conclusion of the trial whichever is earlier.

4] The applicant shall mark his presence at Vasind police station on the first Monday of every month between 11 am to

1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)